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Agenda Item: 4
Meeting Date: June 8, 2005

CALIFORNIA BAY-DELTA PUBLIC ADVISORY COMMITTEE

NEW MEMBER ORIENTATION AND DISCUSSION OF FEDERAL ADVISORY COMMITTEE ACT CHARTER RENEWAL

Summary: Staff from the U.S. Department of the Interior and California Bay-Delta Authority will provide an orientation to the members of the Bay-Delta Public Advisory Committee (Attachment 1) about the Committee's purpose, objectives and parameters established for Federal advisory committees.

Background

A hallmark of the CALFED Bay-Delta Program (CALFED Program) has been the high value that the Program and its implementing agencies place on public outreach and discussion of policy implementation. To help provide public review and discussion, the Bay-Delta Public Advisory Committee (BDPAC) was formed in October 2001 to advise the Secretary of the Interior and Governor of California on the implementation of the 30-year master plan to improve the state's water supplies and revive the Bay-Delta ecosystem.

BDPAC is chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to the Secretary of the Interior and Interior agency heads participating in the CALFED Program and serving as members on the California Bay-Delta Authority (Authority) on implementation of the CALFED Bay-Delta Programmatic Record of Decision (ROD), Public Law 108-361 (Attachment 2) and other applicable law. The Committee's advice and recommendations to the Secretary and other Interior agency heads may be forwarded thereafter to, or at the discretion of the Designated Federal Officer, shared contemporaneously with, the Governor, Authority and other State and Federal entities participating in the Program.

The original Charter called for BDPAC to provide advice through meetings of the executive leadership of both State and Federal agencies involved in implementing the CALFED Program, what was then known as the "Policy Group." That original Charter also noted that, in the event that Congress and the California Legislature both enact legislation establishing a permanent governing body, the Committee will report to the Secretary and the Governor through the successor governing body. In 2003 the State Legislature established the California Bay-Delta Authority (Attachment 3) to be the permanent governing body for the CALFED Program, and in late 2004 Congress authorized Federal participation in the Authority as non-voting members.

Each Federal agency that sponsors advisory committees must adhere to the requirements established by FACA, as well as those administrative guidelines provided by the U.S. General Services Administration's Committee Management Secretariat.

Committee Management Officer and Designated Federal Officer

FACA requires each agency sponsoring a Federal advisory committee to appoint a Committee Management Officer to oversee the administration of the Act's requirements. This individual is located in the Secretary's office and is responsible for overseeing all Interior FACA committees.

In addition, a Designated Federal Officer (DFO) must be assigned to each committee to:

- Call, attend, and adjourn committee meetings;
- Approve agendas;
- Maintain required records on costs and membership;
- Ensure efficient operations;
- Maintain records for availability to the public; and
- Provide copies of committee reports to the Committee Management Officer for forwarding to the Library of Congress.

The Secretary has designated the position of the Regional Director for the U.S. Bureau of Reclamation's Mid-Pacific Region, currently held by Kirk Rodgers, to serve as DFO for BDPAC. Jason Peltier, the Assistant Deputy Secretary of the Interior for Water and Science, serves on behalf of the Secretary for the purpose of accepting advice and recommendations from BDPAC.

Federal Ethics and Conflict of Interest Laws

A member may not participate in matters that will directly affect, or appear to affect, the financial interests of the member or the member's spouse or minor children, unless authorized by the DFO. Compensation from employment does not constitute a financial interest of the member so long as the matter before the committee will not have a special or distinct effect on the member or the member's employer, other than as part of a class. The provisions of this paragraph do not affect any other statutory or regulatory ethical obligations to which a member may be subject.

Frequency of Meetings and Open Access to Committee Meetings and Operations

The Committee will meet semi-annually, or more frequently, as needed. Historically, BDPAC has met quarterly. Meetings are held at the call of the Chair with the advance approval of the DFO. Meetings of the Committee are open to the public and announced in the Federal Register at least 15 days prior to each meeting. A simple majority of the membership of the Committee constitutes a quorum for the transaction of business. For the purpose of the Committee, Committee members may not designate an alternate representative to serve on their behalf in their absence or to sit at the table on their behalf.

A summary report of each meeting of the Committee is prepared for distribution to the membership and to others upon request. Detailed minutes of each meeting of the Committee, as well as recommendations made and copies of all studies and reports

received, issued, or approved in conjunction with the activities of the Committee, are available for public inspection and copying at the offices of the DFO and the Authority.

Under the provisions of FACA, Federal agencies sponsoring advisory committees must:

- Arrange meetings for reasonably accessible and convenient locations and times;
- Publish adequate advance notice of meetings in the *Federal Register*;
- Open advisory committee meetings to the public (with some exceptions-see the section on "Government in the Sunshine Act" below);
- Make available for public inspection, subject to the Freedom of Information Act, papers and records, including detailed minutes of each meeting; and
- Maintain records of expenditures.

Government in the Sunshine Act

Advisory committee meetings may be closed or partially closed to the public based upon provisions of the Government in the Sunshine Act of 1976 (Public Law 94-409).

Examples of meetings that may be closed under the FACA are:

- Those including discussions of classified information;
- Reviews of proprietary data submitted in support of Federal grant applications; and
- Deliberations involving considerations of personnel privacy.

Today, an average of 1,000 advisory committees with more than 40,000 members advise the President and the Executive Branch on such issues as the disposal of high-level nuclear waste, the depletion of atmospheric ozone, the national fight against Acquired Immune Deficiency Syndrome (AIDS), and on efforts to rid the Nation of illegal drugs or to improve schools, highways, and housing, and on other major programs.

BDPAC Subcommittees

BDPAC formed nine subcommittees to broaden public discussion and information gathering even further. Chaired by at least one member of BDPAC, each of the subcommittees meets on a regular basis to discuss relevant activities within the CALFED Program and make recommendations to the full BDPAC.

Subcommittees have been established for Watersheds, Ecosystem Restoration, Water Supply, Water Use Efficiency, Delta Levees and Habitat, Drinking Water, Environmental Justice, Working Landscapes, and a Steering Committee.

List of Attachments

- Attachment 1 – Membership Roster, Bay-Delta Public Advisory Committee
- Attachment 2 – [PL 108-361](#) (Federal authorization bill)
- Attachment 3 – [SB 1633](#) (California Bay-Delta Authority Act)
- Attachment 4 – [CALFED Program Annual Report \(2004\)](#)
- Attachment 5 – CALFED Program Structure (chart)

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PUBLIC LAW 108-361—OCT. 25, 2004

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Public Law 108-361
108th Congress

An Act

To authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

Oct. 25, 2004
[H.R. 2828]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Water Supply, Reliability, and Environmental Improvement Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—CALIFORNIA WATER SECURITY AND ENVIRONMENTAL
ENHANCEMENT**

- Sec. 101. Short title.
- Sec. 102. Definitions.
- Sec. 103. Bay Delta program.
- Sec. 104. Management.
- Sec. 105. Reporting requirements.
- Sec. 106. Crosscut budget.
- Sec. 107. Federal share of costs.
- Sec. 108. Compliance with State and Federal law.
- Sec. 109. Authorization of appropriation.

TITLE II—MISCELLANEOUS

- Sec. 201. Salton Sea study program.
- Sec. 202. Alder Creek water storage and conservation project feasibility study and report.
- Sec. 203. Folsom Reservoir temperature control device authorization.

**TITLE I—CALIFORNIA WATER SECURITY
AND ENVIRONMENTAL ENHANCEMENT**

Water Supply,
Reliability, and
Environmental
Improvement
Act.
California.

Calfed Bay-Delta
Authorization
Act.

SEC. 101. SHORT TITLE.

This title may be cited as the “Calfed Bay-Delta Authorization Act”.

SEC. 102. DEFINITIONS.

In this title:

(1) **CALFED BAY-DELTA PROGRAM.**—The terms “Calfed Bay-Delta Program” and “Program” mean the programs, projects, complementary actions, and activities undertaken through coordinated planning, implementation, and assessment activities of the State agencies and Federal agencies as set forth in the Record of Decision.

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(2) CALIFORNIA BAY-DELTA AUTHORITY.—The terms “California Bay-Delta Authority” and “Authority” mean the California Bay-Delta Authority, as set forth in the California Bay-Delta Authority Act (Cal. Water Code § 79400 et seq.).

(3) DELTA.—The term “Delta” has the meaning given the term in the Record of Decision.

(4) ENVIRONMENTAL WATER ACCOUNT.—The term “Environmental Water Account” means the Cooperative Management Program established under the Record of Decision.

(5) FEDERAL AGENCIES.—The term “Federal agencies” means—

(A) the Department of the Interior, including—

- (i) the Bureau of Reclamation;
- (ii) the United States Fish and Wildlife Service;
- (iii) the Bureau of Land Management; and
- (iv) the United States Geological Survey;

(B) the Environmental Protection Agency;

(C) the Army Corps of Engineers;

(D) the Department of Commerce, including the National Marine Fisheries Service (also known as “NOAA Fisheries”);

(E) the Department of Agriculture, including—

- (i) the Natural Resources Conservation Service;
- and
- (ii) the Forest Service; and

(F) the Western Area Power Administration.

(6) FIRM YIELD.—The term “firm yield” means a quantity of water from a project or program that is projected to be available on a reliable basis, given a specified level of risk, during a critically dry period.

(7) GOVERNOR.—The term “Governor” means the Governor of the State of California.

(8) RECORD OF DECISION.—The term “Record of Decision” means the Calfed Bay-Delta Program Record of Decision, dated August 28, 2000.

(9) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(10) STATE.—The term “State” means the State of California.

(11) STATE AGENCIES.—The term “State agencies” means—

(A) the Resources Agency of California, including—

- (i) the Department of Water Resources;
- (ii) the Department of Fish and Game;
- (iii) the Reclamation Board;
- (iv) the Delta Protection Commission;
- (v) the Department of Conservation;
- (vi) the San Francisco Bay Conservation and Development Commission;
- (vii) the Department of Parks and Recreation; and
- (viii) the California Bay-Delta Authority;

(B) the California Environmental Protection Agency, including the State Water Resources Control Board;

(C) the California Department of Food and Agriculture; and

(D) the Department of Health Services.

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SEC. 103. BAY DELTA PROGRAM.

(a) IN GENERAL.—

(1) RECORD OF DECISION AS GENERAL FRAMEWORK.—The Record of Decision is approved as a general framework for addressing the Calfed Bay-Delta Program, including its components relating to water storage, ecosystem restoration, water supply reliability (including new firm yield), conveyance, water use efficiency, water quality, water transfers, watersheds, the Environmental Water Account, levee stability, governance, and science.

(2) REQUIREMENTS.—

(A) IN GENERAL.—The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in subsections (c) through (f) consistent with—

(i) the Record of Decision;

(ii) the requirement that Program activities consisting of protecting drinking water quality, restoring ecological health, improving water supply reliability (including additional storage, conveyance, and new firm yield), and protecting Delta levees will progress in a balanced manner; and

(iii) this title.

(B) MULTIPLE BENEFITS.—In selecting activities and projects, the Secretary and the heads of the Federal agencies shall consider whether the activities and projects have multiple benefits.

(b) AUTHORIZED ACTIVITIES.—The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in subsections (c) through (f) in furtherance of the Calfed Bay-Delta Program as set forth in the Record of Decision, subject to the cost-share and other provisions of this title, if the activity has been—

(1) subject to environmental review and approval, as required under applicable Federal and State law; and

(2) approved and certified by the relevant Federal agency, following consultation and coordination with the Governor, to be consistent with the Record of Decision.

(c) AUTHORIZATIONS FOR FEDERAL AGENCIES UNDER APPLICABLE LAW.—

(1) SECRETARY OF THE INTERIOR.—The Secretary of the Interior is authorized to carry out the activities described in paragraphs (1) through (10) of subsection (d), to the extent authorized under the reclamation laws, the Central Valley Project Improvement Act (title XXXIV of Public Law 102-575; 106 Stat. 4706), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law.

(2) ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency is authorized to carry out the activities described in paragraphs (3), (5), (6), (7), (8), and (9) of subsection (d), to the extent authorized under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and other applicable law.

(3) SECRETARY OF THE ARMY.—The Secretary of the Army is authorized to carry out the activities described in paragraphs (1), (2), (6), (7), (8), and (9) of subsection (d), to the extent

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authorized under flood control, water resource development, and other applicable law.

(4) SECRETARY OF COMMERCE.—The Secretary of Commerce is authorized to carry out the activities described in paragraphs (2), (6), (7), and (9) of subsection (d), to the extent authorized under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law.

(5) SECRETARY OF AGRICULTURE.—The Secretary of Agriculture is authorized to carry out the activities described in paragraphs (3), (5), (6), (7), (8), and (9) of subsection (d), to the extent authorized under title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.), the Farm Security and Rural Investment Act of 2002 (Public Law 107-171; 116 Stat. 134) (including amendments made by that Act), and other applicable law.

(d) DESCRIPTION OF ACTIVITIES UNDER APPLICABLE LAW.—

(1) WATER STORAGE.—

(A) IN GENERAL.—Activities under this paragraph consist of—

(i) planning and feasibility studies for projects to be pursued with project-specific study for enlargement of—

(I) the Shasta Dam in Shasta County; and

(II) the Los Vaqueros Reservoir in Contra Costa County;

(ii) planning and feasibility studies for the following projects requiring further consideration—

(I) the Sites Reservoir in Colusa County; and

(II) the Upper San Joaquin River storage in Fresno and Madera Counties;

(iii) developing and implementing groundwater management and groundwater storage projects; and

(iv) comprehensive water management planning.

(B) STORAGE PROJECT AUTHORIZATION AND BALANCED CALFED IMPLEMENTATION.—

(i) IN GENERAL.—If on completion of the feasibility study for a project described in clause (i) or (ii) of subparagraph (A), the Secretary, in consultation with the Governor, determines that the project should be constructed in whole or in part with Federal funds, the Secretary shall submit the feasibility study to Congress.

(ii) FINDING OF IMBALANCE.—If Congress fails to authorize construction of the project by the end of the next full session following the submission of the feasibility study, the Secretary, in consultation with the Governor, shall prepare a written determination making a finding of imbalance for the Calfed Bay-Delta Program.

(iii) REPORT ON REBALANCING.—

(I) IN GENERAL.—If the Secretary makes a finding of imbalance for the Program under clause (ii), the Secretary, in consultation with the Governor, shall, not later than 180 days after the end of the full session described in clause (ii),

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prepare and submit to Congress a report on the measures necessary to rebalance the Program.

(II) SCHEDULES AND ALTERNATIVES.—The report shall include preparation of revised schedules and identification of alternatives to rebalance the Program, including resubmission of the project to Congress with or without modification, construction of other projects, and construction of other projects that provide equivalent water supply and other benefits at equal or lesser cost.

(C) WATER SUPPLY AND YIELD STUDY.—

(i) IN GENERAL.—The Secretary, acting through the Bureau of Reclamation and in coordination with the State, shall conduct a study of available water supplies and existing and future needs for water—

(I) within the units of the Central Valley Project;

(II) within the area served by Central Valley Project agricultural, municipal, and industrial water service contractors; and

(III) within the Calfed Delta solution area.

(ii) RELATIONSHIP TO PRIOR STUDY.—In conducting the study, the Secretary shall incorporate and revise, as necessary, the results of the study required by section 3408(j) of the Central Valley Project Improvement Act of 1992 (Public Law 102-575; 106 Stat. 4730).

(iii) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report describing the results of the study, including—

(I) new firm yield and water supply improvements, if any, for Central Valley Project agricultural water service contractors and municipal and industrial water service contractors, including those identified in Bulletin 160;

(II) all water management actions or projects, including those identified in Bulletin 160, that would—

(aa) improve firm yield or water supply; and

(bb) if taken or constructed, balance available water supplies and existing demand with due recognition of water right priorities and environmental needs;

(III) the financial costs of the actions and projects described under subclause (II); and

(IV) the beneficiaries of those actions and projects and an assessment of the willingness of the beneficiaries to pay the capital costs and operation and maintenance costs of the actions and projects.

(D) MANAGEMENT.—The Secretary shall conduct activities related to developing groundwater storage projects to the extent authorized under law.

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(E) COMPREHENSIVE WATER PLANNING.—The Secretary shall conduct activities related to comprehensive water management planning to the extent authorized under law.

(2) CONVEYANCE.—

(A) SOUTH DELTA ACTIONS.—

(i) IN GENERAL.—In the case of the South Delta, activities under this subparagraph consist of—

(I) the South Delta Improvements Program through actions to—

(aa) increase the State Water Project export limit to 8,500 cfs;

(bb) install permanent, operable barriers in the South Delta, under which Federal agencies shall cooperate with the State to accelerate installation of the permanent, operable barriers in the South Delta, with an intent to complete that installation not later than September 30, 2007;

(cc) evaluate, consistent with the Record of Decision, fish screens and intake facilities at the Tracy Pumping Plant facilities; and

(dd) increase the State Water Project export to the maximum capability of 10,300 cfs;

(II) reduction of agricultural drainage in South Delta channels, and other actions necessary to minimize the impact of drainage on drinking water quality;

(III) evaluation of lower San Joaquin River floodway improvements;

(IV) installation and operation of temporary barriers in the South Delta until fully operable barriers are constructed; and

(V) actions to protect navigation and local diversions not adequately protected by temporary barriers.

(ii) ACTIONS TO INCREASE PUMPING.—Actions to increase pumping shall be accomplished in a manner consistent with the Record of Decision requirement to avoid redirected impacts and adverse impacts to fishery protection and with any applicable Federal or State law that protects—

(I) water diversions and use (including avoidance of increased costs of diversion) by in-Delta water users (including in-Delta agricultural users that have historically relied on water diverted for use in the Delta);

(II) water quality for municipal, industrial, agricultural, and other uses; and

(III) water supplies for areas of origin.

(B) NORTH DELTA ACTIONS.—In the case of the North Delta, activities under this subparagraph consist of—

(i) evaluation and implementation of improved operational procedures for the Delta Cross Channel to address fishery and water quality concerns;

(ii) evaluation of a screened through-Delta facility on the Sacramento River; and

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(iii) evaluation of lower Mokelumne River floodway improvements.

(C) INTERTIES.—Activities under this subparagraph consist of—

(i) evaluation and construction of an intertie between the State Water Project California Aqueduct and the Central Valley Project Delta Mendota Canal, near the City of Tracy, as an operation and maintenance activity, except that the Secretary shall design and construct the intertie in a manner consistent with a possible future expansion of the intertie capacity (as described in subsection (f)(1)(B)); and

(ii) assessment of a connection of the Central Valley Project to the Clifton Court Forebay of the State Water Project, with a corresponding increase in the screened intake of the Forebay.

(D) PROGRAM TO MEET STANDARDS.—

(i) IN GENERAL.—Prior to increasing export limits from the Delta for the purposes of conveying water to south-of-Delta Central Valley Project contractors or increasing deliveries through an intertie, the Secretary shall, not later than 1 year after the date of enactment of this Act, in consultation with the Governor, develop and initiate implementation of a program to meet all existing water quality standards and objectives for which the Central Valley Project has responsibility.

Deadline.

(ii) MEASURES.—In developing and implementing the program, the Secretary shall include, to the maximum extent feasible, the measures described in clauses (iii) through (vii).

(iii) RECIRCULATION PROGRAM.—The Secretary shall incorporate into the program a recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives through the use of excess capacity in export pumping and conveyance facilities.

(iv) BEST MANAGEMENT PRACTICES PLAN.—

(I) IN GENERAL.—The Secretary shall develop and implement, in coordination with the State's programs to improve water quality in the San Joaquin River, a best management practices plan to reduce the water quality impacts of the discharges from wildlife refuges that receive water from the Federal Government and discharge salt or other constituents into the San Joaquin River.

(II) COORDINATION WITH INTERESTED PARTIES.—The plan shall be developed in coordination with interested parties in the San Joaquin Valley and the Delta.

(III) COORDINATION WITH ENTITIES THAT DISCHARGE WATER.—The Secretary shall also coordinate activities under this clause with other entities that discharge water into the San Joaquin River to reduce salinity concentrations discharged into

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the River, including the timing of discharges to optimize their assimilation.

(v) ACQUISITION OF WATER.—The Secretary shall incorporate into the program the acquisition from willing sellers of water from streams tributary to the San Joaquin River or other sources to provide flow, dilute discharges of salt or other constituents, and to improve water quality in the San Joaquin River below the confluence of the Merced and San Joaquin Rivers, and to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives.

(vi) PURPOSE.—The purpose of the authority and direction provided to the Secretary under this subparagraph is to provide greater flexibility in meeting the existing water quality standards and objectives for which the Central Valley Project has responsibility so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to Central Valley Project contractors from the New Melones Project.

(vii) UPDATING OF NEW MELONES OPERATING PLAN.—The Secretary shall update the New Melones operating plan to take into account, among other things, the actions described in this title that are designed to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives, and to ensure that actions to enhance fisheries in the Stanislaus River are based on the best available science.

(3) WATER USE EFFICIENCY.—

(A) WATER CONSERVATION PROJECTS.—Activities under this paragraph include water conservation projects that provide water supply reliability, water quality, and ecosystem benefits to the California Bay-Delta system.

(B) TECHNICAL ASSISTANCE.—Activities under this paragraph include technical assistance for urban and agricultural water conservation projects.

(C) WATER RECYCLING AND DESALINATION PROJECTS.—Activities under this paragraph include water recycling and desalination projects, including groundwater remediation projects and projects identified in the Bay Area Water Plan and the Southern California Comprehensive Water Reclamation and Reuse Study and other projects, giving priority to projects that include regional solutions to benefit regional water supply and reliability needs.

(D) WATER MEASUREMENT AND TRANSFER ACTIONS.—Activities under this paragraph include water measurement and transfer actions.

(E) URBAN WATER CONSERVATION.—Activities under this paragraph include implementation of best management practices for urban water conservation.

(F) RECLAMATION AND RECYCLING PROJECTS.—

(i) PROJECTS.—This subparagraph applies to—

(I) projects identified in the Southern California Comprehensive Water Reclamation and Reuse Study, dated April 2001 and authorized by

Applicability.

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section 1606 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h-4); and

(II) projects identified in the San Francisco Bay Area Regional Water Recycling Program described in the San Francisco Bay Area Regional Water Recycling Program Recycled Water Master Plan, dated December 1999 and authorized by section 1611 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h-9).

(ii) DEADLINE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(I) complete the review of the existing studies of the projects described in clause (i); and

(II) make the feasibility determinations described in clause (iii).

(iii) FEASIBILITY DETERMINATIONS.—A project described in clause (i) is presumed to be feasible if the Secretary determines for the project—

(I) in consultation with the affected local sponsoring agency and the State, that the existing planning and environmental studies for the project (together with supporting materials and documentation) have been prepared consistent with Bureau of Reclamation procedures for projects under consideration for financial assistance under the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.); and

(II) that the planning and environmental studies for the project (together with supporting materials and documentation) demonstrate that the project will contribute to the goals of improving water supply reliability in the Calfed solution area or the Colorado River Basin within the State and otherwise meets the requirements of section 1604 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h-2).

(iv) REPORT.—Not later than 90 days after the date of completion of a feasibility study or the review of a feasibility study under this subparagraph, the Secretary shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report describing the results of the study or review.

(4) WATER TRANSFERS.—Activities under this paragraph consist of—

(A) increasing the availability of existing facilities for water transfers;

(B) lowering transaction costs through permit streamlining; and

(C) maintaining a water transfer information clearinghouse.

(5) INTEGRATED REGIONAL WATER MANAGEMENT PLANS.—Activities under this paragraph consist of assisting local and

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regional communities in the State in developing and implementing integrated regional water management plans to carry out projects and programs that improve water supply reliability, water quality, ecosystem restoration, and flood protection, or meet other local and regional needs, in a manner that is consistent with, and makes a significant contribution to, the Calfed Bay-Delta Program.

(6) ECOSYSTEM RESTORATION.—

(A) IN GENERAL.—Activities under this paragraph consist of—

(i) implementation of large-scale restoration projects in San Francisco Bay and the Delta and its tributaries;

(ii) restoration of habitat in the Delta, San Pablo Bay, and Suisun Bay and Marsh, including tidal wetland and riparian habitat;

(iii) fish screen and fish passage improvement projects, including the Sacramento River Small Diversion Fish Screen Program;

(iv) implementation of an invasive species program, including prevention, control, and eradication;

(v) development and integration of Federal and State agricultural programs that benefit wildlife into the Ecosystem Restoration Program;

(vi) financial and technical support for locally-based collaborative programs to restore habitat while addressing the concerns of local communities;

(vii) water quality improvement projects to manage or reduce concentrations of salinity, selenium, mercury, pesticides, trace metals, dissolved oxygen, turbidity, sediment, and other pollutants;

(viii) land and water acquisitions to improve habitat and fish spawning and survival in the Delta and its tributaries;

(ix) integrated flood management, ecosystem restoration, and levee protection projects;

(x) scientific evaluations and targeted research on Program activities; and

(xi) strategic planning and tracking of Program performance.

(B) REPORTING REQUIREMENTS.—The Secretary or the head of the relevant Federal agency (as appropriate under clause (ii)) shall provide to the appropriate authorizing committees of the Senate and the House of Representatives and other appropriate parties in accordance with this subparagraph—

(i) an annual ecosystem program plan report in accordance with subparagraph (C); and

(ii) detailed project reports in accordance with subparagraph (D).

(C) ANNUAL ECOSYSTEM PROGRAM PLAN.—

(i) IN GENERAL.—Not later than October 1 of each year, with respect to each ecosystem restoration action carried out using Federal funds under this title, the Secretary, in consultation with the Governor, shall submit to the appropriate authorizing committees of

Reports.
Deadlines.

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the Senate and the House of Representatives an annual ecosystem program plan report.

(ii) PURPOSES.—The purposes of the report are—

(I) to describe the projects and programs to implement this subsection in the following fiscal year; and

(II) to establish priorities for funding the projects and programs for subsequent fiscal years.

(iii) CONTENTS.—The report shall describe—

(I) the goals and objectives of the programs and projects;

(II) program accomplishments;

(III) major activities of the programs;

(IV) the Federal agencies involved in each project or program identified in the plan and the cost-share arrangements with cooperating agencies;

(V) the resource data and ecological monitoring data to be collected for the restoration projects and how the data are to be integrated, streamlined, and designed to measure the effectiveness and overall trend of ecosystem health in the Bay-Delta watershed;

(VI) implementation schedules and budgets;

(VII) existing monitoring programs and performance measures;

(VIII) the status and effectiveness of measures to minimize the impacts of the program on agricultural land; and

(IX) a description of expected benefits of the restoration program relative to the cost.

(iv) SPECIAL RULE FOR LAND ACQUISITION USING FEDERAL FUNDS.—For each ecosystem restoration project involving land acquisition using Federal funds under this title, the Secretary shall—

(I) identify the specific parcels to be acquired in the annual ecosystem program plan report under this subparagraph; or

(II) not later than 150 days before the project is approved, provide to the appropriate authorizing committees of the Senate and the House of Representatives, the United States Senators from the State, and the United States Representative whose district would be affected, notice of any such proposed land acquisition using Federal funds under this title submitted to the Federal or State agency.

Deadline.
Notices.

(D) DETAILED PROJECT REPORTS.—

(i) IN GENERAL.—In the case of each ecosystem restoration program or project funded under this title that is not specifically identified in an annual ecosystem program plan under subparagraph (C), not later than 45 days prior to approval, the Secretary, in coordination with the State, shall submit to the appropriate authorizing committees of the Senate and the House of Representatives recommendations on the proposed program or project.

(ii) CONTENTS.—The recommendations shall—

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(I) describe the selection of the program or project, including the level of public involvement and independent science review;

(II) describe the goals, objectives, and implementation schedule of the program or project, and the extent to which the program or project addresses regional and programmatic goals and priorities;

(III) describe the monitoring plans and performance measures that will be used for evaluating the performance of the proposed program or project;

(IV) identify any cost-sharing arrangements with cooperating entities;

(V) identify how the proposed program or project will comply with all applicable Federal and State laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(VI) in the case of any program or project involving the acquisition of private land using Federal funds under this title—

(aa) describe the process and timing of notification of interested members of the public and local governments;

(bb) describe the measures taken to minimize impacts on agricultural land pursuant to the Record of Decision; and

(cc) include preliminary management plans for all properties to be acquired with Federal funds, including an overview of existing conditions (including habitat types in the affected project area), the expected ecological benefits, preliminary cost estimates, and implementation schedules.

(7) WATERSHEDS.—Activities under this paragraph consist of—

(A) building local capacity to assess and manage watersheds affecting the Delta system;

(B) technical assistance for watershed assessments and management plans; and

(C) developing and implementing locally-based watershed conservation, maintenance, and restoration actions.

(8) WATER QUALITY.—Activities under this paragraph consist of—

(A) addressing drainage problems in the San Joaquin Valley to improve downstream water quality (including habitat restoration projects that improve water quality) if—

(i) a plan is in place for monitoring downstream water quality improvements; and

(ii) State and local agencies are consulted on the activities to be funded; except that no right, benefit, or privilege is created as a result of this subparagraph;

(B) implementation of source control programs in the Delta and its tributaries;

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(C) developing recommendations through scientific panels and advisory council processes to meet the Calfed Bay-Delta Program goal of continuous improvement in Delta water quality for all uses;

(D) investing in treatment technology demonstration projects;

(E) controlling runoff into the California aqueduct, the Delta-Mendota Canal, and other similar conveyances;

(F) addressing water quality problems at the North Bay Aqueduct;

(G) supporting and participating in the development of projects to enable San Francisco Bay Area water districts, and water entities in San Joaquin and Sacramento Counties, to work cooperatively to address their water quality and supply reliability issues, including—

(i) connections between aqueducts, water transfers, water conservation measures, institutional arrangements, and infrastructure improvements that encourage regional approaches; and

(ii) investigations and studies of available capacity in a project to deliver water to the East Bay Municipal Utility District under its contract with the Bureau of Reclamation, dated July 20, 2001, in order to determine if such capacity can be utilized to meet the objectives of this subparagraph;

(H) development of water quality exchanges and other programs to make high quality water available for urban and other users;

(I) development and implementation of a plan to meet all Delta water quality standards for which the Federal and State water projects have responsibility;

(J) development of recommendations through science panels and advisory council processes to meet the Calfed Bay-Delta Program goal of continuous improvement in water quality for all uses; and

(K) projects that are consistent with the framework of the water quality component of the Calfed Bay-Delta Program.

(9) SCIENCE.—Activities under this paragraph consist of—

(A) supporting establishment and maintenance of an independent science board, technical panels, and standing boards to provide oversight and peer review of the Program;

(B) conducting expert evaluations and scientific assessments of all Program elements;

(C) coordinating existing monitoring and scientific research programs;

(D) developing and implementing adaptive management experiments to test, refine, and improve scientific understandings;

(E) establishing performance measures, and monitoring and evaluating the performance of all Program elements; and

(F) preparing an annual science report.

Reports.

(10) DIVERSIFICATION OF WATER SUPPLIES.—Activities under this paragraph consist of actions to diversify sources of level 2 refuge supplies and modes of delivery to refuges while maintaining the diversity of level 4 supplies pursuant to section

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3406(d)(2) of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4723).

(e) NEW AND EXPANDED AUTHORIZATIONS FOR FEDERAL AGENCIES.—

(1) IN GENERAL.—The heads of the Federal agencies described in this subsection are authorized to carry out the activities described in subsection (f) during each of fiscal years 2005 through 2010, in coordination with the Governor.

(2) SECRETARY OF THE INTERIOR.—The Secretary of the Interior is authorized to carry out the activities described in paragraphs (1), (2), and (4) of subsection (f).

(3) ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE SECRETARIES OF AGRICULTURE AND COMMERCE.—The Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the Secretary of Commerce are authorized to carry out the activities described in subsection (f)(4).

(4) SECRETARY OF THE ARMY.—The Secretary of the Army is authorized to carry out the activities described in paragraphs (3) and (4) of subsection (f).

(f) DESCRIPTION OF ACTIVITIES UNDER NEW AND EXPANDED AUTHORIZATIONS.—

(1) CONVEYANCE.—Of the amounts authorized to be appropriated under section 109, not more than \$184,000,000 may be expended for the following:

(A) SAN LUIS RESERVOIR.—Funds may be expended for feasibility studies, evaluation, and implementation of the San Luis Reservoir lowpoint improvement project, except that Federal participation in any construction of an expanded Pacheco Reservoir shall be subject to future congressional authorization.

(B) INTERTIE.—Funds may be expended for feasibility studies and evaluation of increased capacity of the intertie between the State Water Project California Aqueduct and the Central Valley Project Delta Mendota Canal.

(C) FRANKS TRACT.—Funds may be expended for feasibility studies and actions at Franks Tract to improve water quality in the Delta.

(D) CLIFTON COURT FOREBAY AND THE TRACY PUMPING PLANT.—Funds may be expended for feasibility studies and design of fish screen and intake facilities at Clifton Court Forebay and the Tracy Pumping Plant facilities.

(E) DRINKING WATER INTAKE FACILITIES.—

(i) IN GENERAL.—Funds may be expended for design and construction of the relocation of drinking water intake facilities to in-Delta water users.

(ii) DRINKING WATER QUALITY.—The Secretary shall coordinate actions for relocating intake facilities on a time schedule consistent with subsection (d)(2)(A)(i)(I)(bb) or take other actions necessary to offset the degradation of drinking water quality in the Delta due to the South Delta Improvement Program.

(F) NEW MELONES RESERVOIR.—

(i) IN GENERAL.—In addition to the other authorizations granted to the Secretary by this title, the Secretary shall acquire water from willing sellers

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and undertake other actions designed to decrease releases from the New Melones Reservoir for meeting water quality standards and flow objectives for which the Central Valley Project has responsibility to assist in meeting allocations to Central Valley Project contractors from the New Melones Project.

(ii) PURPOSE.—The authorization under this subparagraph is solely meant to add flexibility for the Secretary to meet any obligations of the Secretary to the Central Valley Project contractors from the New Melones Project by reducing demand for water dedicated to meeting water quality standards in the San Joaquin River.

(iii) FUNDING.—Of the amounts authorized to be appropriated under section 109, not more than \$30,000,000 may be expended to carry out clause (i).

(G) RECIRCULATION OF EXPORT WATER.—Funds may be used to conduct feasibility studies, evaluate, and, if feasible, implement the recirculation of export water to reduce salinity and improve dissolved oxygen in the San Joaquin River.

(2) ENVIRONMENTAL WATER ACCOUNT.—

(A) IN GENERAL.—Of the amounts authorized to be appropriated under section 109, not more than \$90,000,000 may be expended for implementation of the Environmental Water Account.

(B) NONREIMBURSABLE FEDERAL EXPENDITURE.—Expenditures under subparagraph (A) shall be considered a nonreimbursable Federal expenditure in recognition of the payments of the contractors of the Central Valley Project to the Restoration Fund created by the Central Valley Project Improvement Act (Title XXXIV of Public Law 102-575; 106 Stat. 4706).

(C) USE OF RESTORATION FUND.—

(i) IN GENERAL.—Of the amounts appropriated for the Restoration Fund for each fiscal year, an amount not to exceed \$10,000,000 for any fiscal year may be used to implement the Environmental Water Account to the extent those actions are consistent with the fish and wildlife habitat restoration and improvement purposes of the Central Valley Project Improvement Act.

(ii) ACCOUNTING.—Any such use of the Restoration Fund shall count toward the 33 percent of funds made available to the Restoration Fund that, pursuant to section 3407(a) of the Central Valley Project Improvement Act, are otherwise authorized to be appropriated to the Secretary to carry out paragraphs (4) through (6), (10) through (18), and (20) through (22) of section 3406(b) of that Act.

(iii) FEDERAL FUNDING.—The \$10,000,000 limitation on the use of the Restoration Fund for the Environmental Water Account under clause (i) does not limit the appropriate amount of Federal funding for the Environmental Water Account.

(3) LEVEE STABILITY.—

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(A) IN GENERAL.—For purposes of implementing the CalFed Bay-Delta Program within the Delta (as defined in Cal. Water Code § 12220)), the Secretary of the Army is authorized to undertake the construction and implementation of levee stability programs or projects for such purposes as flood control, ecosystem restoration, water supply, water conveyance, and water quality objectives.

(B) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Army shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that describes the levee stability reconstruction projects and priorities that will be carried out under this title during each of fiscal years 2005 through 2010.

Applicability.

(C) SMALL FLOOD CONTROL PROJECTS.—Notwithstanding the project purpose, the authority granted under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s) shall apply to each project authorized under this paragraph.

(D) PROJECTS.—Of the amounts authorized to be appropriated under section 109, not more than \$90,000,000 may be expended to—

(i) reconstruct Delta levees to a base level of protection (also known as the “Public Law 84-99 standard”);

(ii) enhance the stability of levees that have particular importance in the system through the Delta Levee Special Improvement Projects Program;

(iii) develop best management practices to control and reverse land subsidence on Delta islands;

(iv) develop a Delta Levee Emergency Management and Response Plan that will enhance the ability of Federal, State, and local agencies to rapidly respond to levee emergencies;

(v) develop a Delta Risk Management Strategy after assessing the consequences of Delta levee failure from floods, seepage, subsidence, and earthquakes;

(vi) reconstruct Delta levees using, to the maximum extent practicable, dredged materials from the Sacramento River, the San Joaquin River, and the San Francisco Bay in reconstructing Delta levees;

(vii) coordinate Delta levee projects with flood management, ecosystem restoration, and levee protection projects of the lower San Joaquin River and lower Mokelumne River floodway improvements and other projects under the Sacramento-San Joaquin Comprehensive Study; and

(viii) evaluate and, if appropriate, rehabilitate the Suisun Marsh levees.

(4) PROGRAM MANAGEMENT, OVERSIGHT, AND COORDINATION.—

(A) IN GENERAL.—Of the amounts authorized to be appropriated under section 109, not more than \$25,000,000 may be expended by the Secretary or the other heads of Federal agencies, either directly or through grants, contracts, or cooperative agreements with agencies of the State, for—

(i) Program support;

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(ii) Program-wide tracking of schedules, finances, and performance;

(iii) multiagency oversight and coordination of Program activities to ensure Program balance and integration;

(iv) development of interagency cross-cut budgets and a comprehensive finance plan to allocate costs in accordance with the beneficiary pays provisions of the Record of Decision;

(v) coordination of public outreach and involvement, including tribal, environmental justice, and public advisory activities in accordance with the Federal Advisory Committee Act (5 U.S.C. App.); and

(vi) development of Annual Reports.

(B) PROGRAM-WIDE ACTIVITIES.—Of the amount referred to in subparagraph (A), not less than 50 percent of the appropriated amount shall be provided to the California Bay-Delta Authority to carry out Program-wide management, oversight, and coordination activities.

SEC. 104. MANAGEMENT.

(a) COORDINATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall coordinate their activities with the State agencies.

(b) PUBLIC PARTICIPATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall cooperate with local and tribal governments and the public through an advisory committee established in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) and other appropriate means, to seek input on Program planning and design, technical assistance, and development of peer review science programs.

(c) SCIENCE.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall seek to ensure, to the maximum extent practicable, that—

(1) all major aspects of implementing the Program are subjected to credible and objective scientific review; and

(2) major decisions are based upon the best available scientific information.

(d) GOVERNANCE.—

(1) IN GENERAL.—In carrying out the Calfed Bay-Delta Program, the Secretary and the Federal agency heads are authorized to participate as nonvoting members of the California Bay-Delta Authority, as established in the California Bay-Delta Authority Act (Cal. Water Code §79400 et seq.), to the extent consistent with Federal law, for the full duration of the period the Authority continues to be authorized by State law.

(2) RELATIONSHIP TO FEDERAL LAW AND AGENCIES.—Nothing in this subsection shall preempt or otherwise affect any Federal law or limit the statutory authority of any Federal agency.

(3) CALIFORNIA BAY-DELTA AUTHORITY.—

(A) ADVISORY COMMITTEE.—The California Bay-Delta Authority shall not be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

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(B) **FINANCIAL INTEREST.**—The financial interests of the California Bay-Delta Authority shall not be imputed to any Federal official participating in the Authority.

(C) **ETHICS REQUIREMENTS.**—A Federal official participating in the California Bay-Delta Authority shall remain subject to Federal financial disclosure and conflict of interest laws and shall not be subject to State financial disclosure and conflict of interest laws.

(e) **ENVIRONMENTAL JUSTICE.**—The Federal agencies, consistent with Executive Order 12898 (59 Fed. Reg. 7629), should continue to collaborate with State agencies to—

(1) develop a comprehensive environmental justice workplan for the Calfed Bay-Delta Program; and

(2) fulfill the commitment to addressing environmental justice challenges referred to in the Calfed Bay-Delta Program Environmental Justice Workplan, dated December 13, 2000.

(f) **LAND ACQUISITION.**—Federal funds appropriated by Congress specifically for implementation of the Calfed Bay-Delta Program may be used to acquire fee title to land only where consistent with the Record of Decision.

SEC. 105. REPORTING REQUIREMENTS.

(a) **REPORT.**—

(1) **IN GENERAL.**—Not later than February 15 of each year, the Secretary, in cooperation with the Governor, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that—

(A) describes the status of implementation of all components of the Calfed Bay-Delta Program;

(B) sets forth any written determination resulting from the review required under subsection (b) or section 103(d)(1)(B); and

(C) includes any revised schedule prepared under subsection (b) or section 103(d)(1)(B)(iii)(II).

(2) **CONTENTS.**—The report required under paragraph (1) shall describe—

(A) the progress of the Calfed Bay-Delta Program in meeting the implementation schedule for the Program in a manner consistent with the Record of Decision;

(B) the status of implementation of all components of the Program;

(C) expenditures in the past fiscal year for implementing the Program;

(D) accomplishments during the past fiscal year in achieving the objectives of additional and improved—

(i) water storage;

(ii) water quality, including—

(I) the water quality targets described in section 2.2.9 of the Record of Decision; and

(II) any pending actions that may affect the ability of the Calfed Bay-Delta Program to achieve those targets and requirements;

(iii) water use efficiency;

(iv) ecosystem restoration;

(v) watershed management;

(vi) levee system integrity;

(vii) water transfers;

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- (viii) water conveyance;
 - (ix) water supply reliability (including new firm yield), including progress in achieving the water supply targets described in section 2.2.4 of the Record of Decision and any pending actions that may affect the ability of the Calfed Bay-Delta Program to achieve those targets; and
 - (x) the uses and assets of the environmental water account described in section 2.2.7 of the Record of Decision;
 - (E) Program goals, current schedules, and relevant financing agreements, including funding levels necessary to achieve completion of the feasibility studies and environmental documentation for the surface storage projects identified in section 103 by not later than September 30, 2008;
 - (F) progress on—
 - (i) storage projects;
 - (ii) conveyance improvements;
 - (iii) levee improvements;
 - (iv) water quality projects; and
 - (v) water use efficiency programs;
 - (G) completion of key projects and milestones identified in the Ecosystem Restoration Program, including progress on project effectiveness, monitoring, and accomplishments;
 - (H) development and implementation of local programs for watershed conservation and restoration;
 - (I) progress in improving water supply reliability and implementing the Environmental Water Account;
 - (J) achievement of commitments under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and endangered species law of the State;
 - (K) implementation of a comprehensive science program;
 - (L) progress toward acquisition of the Federal and State permits (including permits under section 404(a) of the Federal Water Pollution Control Act (33 U.S.C. 1344(a))) for implementation of projects in all identified Program areas;
 - (M) progress in achieving benefits in all geographic regions covered by the Program;
 - (N) legislative action on—
 - (i) water transfer;
 - (ii) groundwater management;
 - (iii) water use efficiency; and
 - (iv) governance;
 - (O) the status of complementary actions;
 - (P) the status of mitigation measures; and
 - (Q) revisions to funding commitments and Program responsibilities.
- (b) ANNUAL REVIEW OF PROGRESS AND BALANCE.—
- (1) IN GENERAL.—Not later than November 15 of each year, the Secretary, in cooperation with the Governor, shall review progress in implementing the Calfed Bay-Delta Program based on—
- Deadline.
- (A) consistency with the Record of Decision; and

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(B) balance in achieving the goals and objectives of the Calfed Bay-Delta Program.

(2) REVISED SCHEDULE.—If, at the conclusion of each such annual review or if a timely annual review is not undertaken, the Secretary or the Governor determines in writing that either the Program implementation schedule has not been substantially adhered to, or that balanced progress in achieving the goals and objectives of the Program is not occurring, the Secretary and the Governor, in coordination with the Bay-Delta Public Advisory Committee, shall prepare a revised schedule to achieve balanced progress in all Calfed Bay-Delta Program elements consistent with the intent of the Record of Decision.

(c) FEASIBILITY STUDIES.—Any feasibility studies completed as a result of this title shall include identification of project benefits and a cost allocation plan consistent with the beneficiaries pay provisions of the Record of Decision.

SEC. 106. CROSSCUT BUDGET.

(a) IN GENERAL.—The President's budget shall include such requests as the President considers necessary and appropriate for the appropriate level of funding for each of the Federal agencies to carry out its responsibilities under the Calfed Bay-Delta Program.

(b) REQUESTS BY FEDERAL AGENCIES.—The funds shall be requested for the Federal agency with authority and programmatic responsibility for the obligation of the funds, in accordance with subsections (b) through (f) of section 103.

(c) REPORT.—Not later than 30 days after submission of the budget of the President to Congress, the Director of the Office of Management and Budget, in coordination with the Governor, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a financial report certified by the Secretary containing—

(1) an interagency budget crosscut report that—

(A) displays the budget proposed, including any interagency or intra-agency transfer, for each of the Federal agencies to carry out the Calfed Bay-Delta Program for the upcoming fiscal year, separately showing funding requested under both pre-existing authorities and under the new authorities granted by this title; and

(B) identifies all expenditures since 1998 by the Federal and State governments to achieve the objectives of the Calfed Bay-Delta Program;

(2) a detailed accounting of all funds received and obligated by all Federal agencies and State agencies responsible for implementing the Calfed Bay-Delta Program during the previous fiscal year;

(3) a budget for the proposed projects (including a description of the project, authorization level, and project status) to be carried out in the upcoming fiscal year with the Federal portion of funds for activities under subsections (b) through (f) of section 103; and

(4) a listing of all projects to be undertaken in the upcoming fiscal year with the Federal portion of funds for activities under subsections (b) through (f) of section 103.

SEC. 107. FEDERAL SHARE OF COSTS.

(a) IN GENERAL.—The Federal share of the cost of implementing the Calfed Bay-Delta Program for fiscal years 2005 through 2010

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in the aggregate, as set forth in the Record of Decision, shall not exceed 33.3 percent.

(b) **PAYMENT FOR BENEFITS.**—The Secretary shall ensure that all beneficiaries, including beneficiaries of environmental restoration and other Calfed program elements, shall pay for the benefit received from all projects or activities carried out under the Calfed Bay-Delta Program.

(c) **INTEGRATED RESOURCE PLANNING.**—Federal expenditures for the Calfed Bay-Delta Program shall be implemented in a manner that encourages integrated resource planning.

SEC. 108. COMPLIANCE WITH STATE AND FEDERAL LAW.

Nothing in this title—

(1) invalidates or preempts State water law or an interstate compact governing water;

(2) alters the rights of any State to any appropriated share of the waters of any body of surface or ground water;

(3) preempts or modifies any State or Federal law or interstate compact governing water quality or disposal;

(4) confers on any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource; or

(5) alters or modifies any provision of existing Federal law, except as specifically provided in this title.

SEC. 109. AUTHORIZATION OF APPROPRIATION.

There are authorized to be appropriated to the Secretary and the heads of the Federal agencies to pay the Federal share of the cost of carrying out the new and expanded authorities described in subsections (e) and (f) of section 103 \$389,000,000 for the period of fiscal years 2005 through 2010, to remain available until expended.

TITLE II—MISCELLANEOUS

SEC. 201. SALTON SEA STUDY PROGRAM.

Deadline.

Not later than December 31, 2006, the Secretary of the Interior, in coordination with the State of California and the Salton Sea Authority, shall complete a feasibility study on a preferred alternative for Salton Sea restoration.

SEC. 202. ALDER CREEK WATER STORAGE AND CONSERVATION PROJECT FEASIBILITY STUDY AND REPORT.

(a) **STUDY.**—Pursuant to Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)), the Secretary of the Interior (referred to in this section as the “Secretary”), through the Bureau of Reclamation, and in consultation and cooperation with the El Dorado Irrigation District, is authorized to conduct a study to determine the feasibility of constructing a project on Alder Creek in El Dorado County, California, to store water and provide water supplies during dry and critically dry years for consumptive use, recreation, in-stream flows, irrigation, and power production.

(b) **REPORT.**—

(1) **TRANSMISSION.**—On completion of the study authorized by subsection (a), the Secretary shall transmit to the Committee

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on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report containing the results of the study.

(2) CONTENTS OF REPORT.—The report shall contain appropriate cost sharing options for the implementation of the project based on the use and possible allocation of any stored water.

(3) USE OF AVAILABLE MATERIALS.—In developing the report under this section, the Secretary shall use reports and any other relevant information supplied by the El Dorado Irrigation District.

(c) COST SHARE.—

(1) FEDERAL SHARE.—The Federal share of the costs of the feasibility study authorized by this section shall not exceed 50 percent of the total cost of the study.

(2) IN-KIND CONTRIBUTION FOR NON-FEDERAL SHARE.—The Secretary may accept as part of the non-Federal cost share the contribution such in-kind services by the El Dorado Irrigation District as the Secretary determines will contribute to the conduct and completion of the study.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$3,000,000.

SEC. 203. FOLSOM RESERVOIR TEMPERATURE CONTROL DEVICE AUTHORIZATION.

Section 1(c) of Public Law 105-295 (112 Stat. 2820) (as amended by section 219(b) of Public Law 108-137 (117 Stat. 1853)) is amended in the second sentence by striking “\$3,500,000” and inserting “\$6,250,000”.

Approved October 25, 2004.

LEGISLATIVE HISTORY—H.R. 2828:

HOUSE REPORTS: No. 108-573, Pt. 1 (Comm. on Resources).
CONGRESSIONAL RECORD, Vol. 150 (2004):

July 9, considered and passed House.

Sept. 15, considered and passed Senate, amended.

Oct. 6, House concurred in Senate amendment.



SB 1653 (Costa)

CHAPTER 812

FILED WITH SECRETARY OF STATE SEPTEMBER 23, 2002

APPROVED BY GOVERNOR SEPTEMBER 23, 2002

PASSED THE SENATE AUGUST 29, 2002

PASSED THE ASSEMBLY AUGUST 28, 2002

AMENDED IN ASSEMBLY AUGUST 26, 2002

AMENDED IN ASSEMBLY AUGUST 7, 2002

AMENDED IN SENATE MAY 28, 2002

INTRODUCED BY Senator Costa

(Principal coauthors: Assembly Members Canciamilla and Hertzberg)

FEBRUARY 21, 2002

An act to amend Section 11552 of the Government Code, and to add and repeal Division 26.4 (commencing with Section 79400) of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1653, Costa. California Bay-Delta Act.

Under existing law, certain state and federal agencies with management and regulatory responsibilities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary participate in the CALFED Bay-Delta Program for the purposes of improving ecosystem quality, water supply reliability, water quality, and the integrity of the levees and channels in the bay-delta.

This bill would enact the California Bay-Delta Authority Act. The bill would establish in the Resources Agency the California Bay-Delta Authority, consisting of representatives from 6 state agencies and 6 federal agencies if those federal

agencies are authorized to participate, 7 public members, one member of the Bay-Delta Public Advisory Committee, and 4 nonvoting, ex officio members of the Legislature. The bill would prescribe the authority's organization, powers, and purposes.

The bill would require the authority and the implementing agencies, as defined, to carry out the programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments and other actions that address the goals and objectives of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

The bill would require the Governor to appoint a director, in consultation with the Secretary of the Interior, and would prescribe the director's salary, duties, and powers. The bill would require the authority to appoint a lead scientist and would require the lead scientist to nominate, and the authority to establish, an Independent Science Board that would advise and make recommendations to the authority and the Bay-Delta Public Advisory Committee.

The bill would require the authority to review, approve, and make recommendations regarding certain annual program plans and project expenditures submitted by the implementing agencies. The bill would require the director to prepare and submit to the Department of Finance an annual state proposed budget for identified program elements of the Bay-Delta Program and the authority's oversight and coordination duties.

The bill would repeal these provisions on January 1, 2006, unless the Secretary of the Resources Agency makes a certain determination.

The people of the State of California do enact as follows:

SECTION 1. Section 11552 of the Government Code is amended to read:

11552. Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars (\$85,402) shall be paid to each of the following:

- (a) Commissioner of Financial Institutions.
- (b) Commissioner of Corporations.
- (c) Insurance Commissioner.
- (d) Director of Transportation.
- (e) Real Estate Commissioner.
- (f) Director of Social Services.
- (g) Director of Water Resources.
- (h) Director of Corrections.
- (i) Director of General Services.
- (j) Director of Motor Vehicles.
- (k) Director of the Youth Authority.
- (l) Executive Officer of the Franchise Tax Board.
- (m) Director of Employment Development.
- (n) Director of Alcoholic Beverage Control.
- (o) Director of Housing and Community Development.
- (p) Director of Alcohol and Drug Abuse.
- (q) Director of the Office of Statewide Health Planning and Development.
- (r) Director of the Department of Personnel Administration.
- (s) Chairperson and Member of the Board of Equalization.
- (t) Secretary of the Trade and Commerce Agency.
- (u) State Director of Health Services.
- (v) Director of Mental Health.
- (w) Director of Developmental Services.
- (x) State Public Defender.
- (y) Director of the California State Lottery.
- (z) Director of Fish and Game.
- (aa) Director of Parks and Recreation.
- (ab) Director of Rehabilitation.
- (ac) Director of Veterans Affairs.
- (ad) Director of Consumer Affairs.

(ae) Director of Forestry and Fire Protection.

(af) The Inspector General pursuant to Section 6125 of the Penal Code.

(ag) Director of Child Support Services.

(ah) Director of the California Bay-Delta Authority.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SECTION. 2. Division 26.4 (commencing with Section 79400) is added to the Water Code, to read:

DIVISION 26.4. CALIFORNIA BAY-DELTA AUTHORITY ACT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title and Legislative Findings

79400. This division shall be known and may be cited as the California Bay-Delta Authority Act.

79401. The Legislature finds and declares all of the following:

(a) The San Francisco Bay/Sacramento-San Joaquin Delta Estuary is the largest estuary on the West Coast of the United States. It includes over 738,000 acres in five counties. The tributaries, sloughs, and islands support over 750 plant and animal species.

(b) The bay-delta, its tributaries, and watershed are critical to California's economy, supplying drinking water for two-thirds of Californians and irrigation water for over 7,000,000 acres of the most highly productive agricultural land in

the world. It also supports 80 percent of the state's commercial salmon fisheries.

(c) The bay-delta is the hub of California's two largest water distribution systems - the Central Valley Project, operated by the federal Bureau of Reclamation and the State Water Project, operated by the California Department of Water Resources. It also provides the conveyance of floodwaters from most of the rivers in the Central Valley.

(d) Conflicts currently exist regarding water use for the purposes of water quality, fish protection, and water supply that demonstrate how little flexibility the state's water supply systems have to meet the state's growing demand for water and the need to protect the environment.

(e) A solution to these problems requires state, federal, tribal, and local action in numerous regions throughout the state, not only in the bay-delta itself, but also in the bay-delta watershed and the areas that depend on water exported from the bay-delta. The California Bay-Delta Program is divided into the following five regions:

- (1) Sacramento and San Joaquin River Delta.
- (2) San Francisco Bay.
- (3) Sacramento Valley.
- (4) San Joaquin Valley.
- (5) Southern California.

(f) Nearly two dozen state and federal agencies have some role in managing or regulating the natural resources of the bay-delta and its watershed. A coordinated implementation structure and organization is necessary for the effective implementation of the California Bay-Delta Program. The state and federal agencies participating in the program include all of the following: the Resources Agency, Department of Water Resources, Department of Fish and Game, Department of Food and Agriculture, California Environmental Protection Agency, State Water Resources Control Board, State Department of Health Services, United States Department of the Interior, United States Department of

Agriculture, United States Bureau of Reclamation, United States Fish and Wildlife Service, United States Geological Survey, United States Bureau of Land Management, United States National Marine Fisheries Service, United States Environmental Protection Agency, United States Army Corp of Engineers, United States Natural Resources Conservation Service, United States Forest Service, and Western Area Power Administration.

(g) The agencies participating in the California Bay-Delta Program have prepared a 30-year plan to coordinate existing programs and direct new programs to improve the quality and reliability of the state's water supplies and to restore the ecological health of the bay-delta watershed.

(h) To ensure efficiency, transparency, and accountability in decision making, the implementation of the California Bay-Delta Program requires the establishment of an authority. The authority is intended to accomplish all of the following:

(1) Provide accountability to the Legislature, Congress, and interested parties for the program's performance.

(2) Promote the implementation of the program in a balanced manner.

(3) Provide consistent monitoring, assessment, and reporting of the agencies' individual and cumulative actions.

(4) Provide the use of sound, consistent science across all program elements.

(5) Coordinate existing and new government programs to meet common goals, avoid conflicts, and eliminate redundancy and waste.

(6) Oversee coordinated implementation of the California Bay-Delta Program in a manner that is consistent with the mission statement, goals, and objectives of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(7) Promote the development and implementation of regional programs to advance the program elements.

(i) The successful implementation of the California Bay-Delta Program will require the full cooperation and participation of many federal agencies. The

Legislature, in adding this division, expects the subsequent enactment of federal legislation authorizing the full participation of federal agencies in the authority established and activities prescribed by this division. Until that federal legislation is enacted, federal agencies are invited to participate in the authority and its activities, as described in this division, to the extent possible under existing federal agency authorizations.

Article 2. Definitions

79402. Unless the context otherwise requires, the following definitions set forth in this section govern the construction of this division:

(a) “Authority” means the California Bay-Delta Authority.

(b) “Balance” or “balanced implementation” means the implementation of projects, programs, or other actions in a manner that meets both of the following requirements:

(1) Is consistent with the implementation schedule and milestones described in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(2) Results in concurrent improvement in all program elements in a manner that ensures that improvements in some program elements are not made without corresponding improvements in other program elements.

(c) “Bay-delta” means the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

(d) “Bay-Delta Public Advisory Committee” means the Bay-Delta Public Advisory Committee established by charter issued by the United States Department of Interior, dated June 8, 2001, and filed on July 2, 2002.

(e) “California Bay-Delta Program” or “Bay-Delta Program” means those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(f) “Category A programs” means those state and federal agency programs and funds that are to be managed and implemented consistent with the California Bay-Delta Program’s goals and objectives.

(g) “Director” means the Director of the California Bay-Delta Authority.

(h) “Implementing agencies” means those agencies with the primary responsibility for implementing the program elements, subject to Sections 79440 and 79441.

(i) “Program elements” means the following 11 program elements of the California Bay-Delta Program:

- (1) Levee system integrity.
 - (2) Water quality.
 - (3) Water supply reliability.
 - (4) Ecosystem restoration.
 - (5) Water use efficiency.
 - (6) Water transfer.
 - (7) Watershed.
 - (8) Storage.
 - (9) Conveyance.
 - (10) Science.
 - (11) Environmental water account.
- (j) “Projects” means both programs and capital projects.

Article 3. General Provisions

79403.5. (a) The authority and the implementing agencies shall carry out the programs, projects, and activities necessary to implement the Bay-Delta Program in accordance with Section 79441. The authority shall coordinate the activities of the implementing agencies to promote balanced implementation that meets the goals and objectives of the Bay-Delta Program.

(b) State agencies, whenever feasible, shall carry out their authority and

responsibilities in a manner that is consistent with the goals of the Bay-Delta Program to promote cooperative and coordinated actions and programs that result in balanced solutions to bay-delta problems.

(c) Nothing in this division shall be construed to restrict or override constitutional, statutory, regulatory, or adjudicatory authority or public trust responsibilities of any federally recognized Indian tribe, or any local, state, or federal agency, or to restrict or override authority or responsibility of state, federal, or local water project operations under applicable law and contracts. This division does not abrogate or modify state laws with respect to responsibilities to the State Water Project bondholders and shall be implemented in a manner consistent with Sections 10505 and 10505.5, Article 3 (commencing with Section 11460) of Chapter 3 of Part 3 of Division 6, and Chapter 1 (commencing with Section 12200) of Part 4.5 of Division 6.

79404. This division shall be carried out in a manner consistent with respective state and federal agency budget development, review, and approval processes.

79405. The authority is an agency of the state. Nothing in this division shall be construed to waive the state's immunity to suit in federal court under the Eleventh Amendment to the United States Constitution. A federal representative on the authority may participate to the extent allowed by federal law and may decline to participate in any matter with regard to which constitutional concerns arise, as determined by that representative.

79406. State agencies, including the authority, shall work with federal agencies and the Congress of the United States to obtain, as soon as reasonably feasible, the necessary federal approvals, including federal legislation, that will enable the federal agencies to participate with the state in the governance of the Bay-Delta Program pursuant to this division.

79407. (a) Nothing in this division may be construed as a certification of any of the following:

(1) The CALFED Bay-Delta Program final programmatic environmental impact statement/environmental impact report dated July 21, 2000.

(2) The CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(3) The Framework Agreement, dated June 9, 2000.

(b) Nothing in this division affects the rights of litigants, or the merits of any pending lawsuit relating to the CALFED Bay-Delta Program.

CHAPTER 2. CALIFORNIA BAY-DELTA AUTHORITY

Article 1. California Bay-Delta Authority

79410. There is hereby established in the Resources Agency the California Bay-Delta Authority.

79412. (a) The authority shall include representatives from six state agencies and six federal agencies if those identified federal agencies are authorized to participate, seven public members, one member of the Bay-Delta Public Advisory Committee, and four nonvoting ex officio members, as follows:

(1) The Secretary of the Resources Agency.

(2) The Secretary of the California Environmental Protection Agency.

(3) The Director of Water Resources.

(4) The Director of Fish and Game.

(5) The State Director of Health Services.

(6) The Secretary of the Department of Food and Agriculture.

(7) The Secretary of the Interior.

(8) The Regional Administrator of Region IX of the United States Environmental Protection Agency.

(9) The Operations Manager of the California/Nevada Operations Office of the United States Fish and Wildlife Service.

(10) The Regional Director of the United States Mid-Pacific Region of the Bureau of Reclamation.

(11) The District Engineer of the United States Sacramento District of the Army Corp of Engineers.

(12) The Regional Administrator of the Southwest Region of the United States National Marine Fisheries Service.

(13) One public member from the Sacramento and San Joaquin River Delta Region.

(14) One public member from the San Francisco Bay Region.

(15) One public member from the Sacramento Valley Region.

(16) One public member from the San Joaquin Valley Region.

(17) One public member from the Southern California Region.

(18) One member of the Bay-Delta Public Advisory Committee.

(19) Two at-large members.

(20) The Chairperson and Vice Chairperson of the Assembly Water Parks and Wildlife Committee, or its successor, as a nonvoting, ex officio member.

(21) The Chairperson and Vice Chairperson of the Senate Agriculture and Water Resources Committee, or its successor, as a nonvoting, ex officio member.

(b) The five public members subject to regional requirements shall be appointed by the Governor, in consultation with the Secretary of the Interior if appropriate federal authorizing legislation has not been enacted, or with the concurrence of the Secretary of the Interior if appropriate federal authorizing legislation has been enacted, and with the advice and consent of the Senate.

(c) One at-large public member shall be appointed by the President Pro Tempore of the Senate in consultation with the Secretary of the Interior.

(d) One at-large public member shall be appointed by the Speaker of the Assembly in consultation with the Secretary of the Interior.

(e) (1) For the purposes of being eligible to serve on the board, a public

member described in any of the paragraphs (13) to (17), inclusive, of subdivision (a) shall be required to live in the region he or she represents.

(2) A public member shall have substantial training, expertise, and knowledge as follows:

(A) With regard to at least one of the following areas: ecosystem restoration, levees, water supply, or water quality.

(B) With regard to labor, Native American matters, local government, the environment, or business if that public member meets the requirements of subparagraph (A).

(f) The public members, as a group, shall reflect a broad range of the experience and knowledge described in subdivision (e).

(g) The representative of the Bay-Delta Public Advisory Committee shall be selected by a majority vote of all the members of that committee.

(h) A member of the authority described in any of the paragraphs (1) to (12), inclusive, of subdivision (a) may designate, in writing, a deputy director of that member's agency, or a person occupying an equivalent classification, to act in the place of that member if that member is absent.

(i) The federal representatives described in paragraphs (7) to (12), inclusive, of subdivision (a) may participate as nonvoting members until federal authorizing legislation is enacted and upon the enactment of that legislation, shall become voting members.

79413. Federal participation in the authority is intended to promote coordination and provide advice from federal agencies and thereby assist the state and federal agencies to more effectively meet their common goals and obligations. Nothing in this division extends the application of federal law, including the National Environmental Policy Act, to actions by state agencies, or extends the application of state law, including the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), to actions by federal agencies.

79414. The authority is subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

79415. (a) Except as provided in subdivision (b), a public member of the authority shall hold office for a term of four years, and until a successor is appointed.

(b) In the case of the public members initially appointed by the Governor, two members shall be appointed to serve until January 1, 2004, and three members until January 1, 2006.

(c) The Governor, in consultation with the Secretary of the Interior, shall appoint one of the authority members as a chairperson who shall preside at all meetings, and a vice-chairperson who shall preside in the absence of the chairperson.

(d) For the purposes of conducting the authority's business, a quorum of eleven voting members of the authority shall be present, which shall include at least three public members. All actions approved by the authority shall require an affirmative vote of a majority of the authority members eligible to vote.

(e) The authority may form committees, and the committees may make recommendations to the full authority.

(f) Each public member of the authority shall receive compensation in the amount of one hundred dollars (\$100) per day, not to exceed eight hundred dollars (\$800) per month, for conducting any authority business authorized by the authority, upon the approval of the compensation by a majority of the authority members by a recorded vote. A public member may also receive reimbursement for the necessary expenses incurred by the member in the performance of the member's duties.

Article 2. Powers and Duties

79420. (a) The authority may exercise all of the following powers:

- (1) Sue or be sued.
- (2) Delegate administrative functions to the staff of the authority.
- (3) Request reports from state, federal, and local government agencies on issues related to the implementation of the California Bay-Delta Program.
- (4) Receive funds, including funds from private and local government sources, and contributions from public and private sources, as well as state and federal appropriations.
- (5) Enter into contracts consistent with existing contracting practices of the Department of General Services.
- (6) Disburse funds through grants, public assistance, loans, and contracts to entities, including federally recognized Indian tribes, within the Bay-Delta Program regions, as described in subdivision (e) of Section 79401, to carry out the Bay-Delta Program goals and objectives.
- (7) Employ the services of other public, nonprofit, or private entities.
- (8) Employ its own legal staff or contract with other state or federal agencies for legal services, or both. The authority may employ special legal counsel with the approval of the Attorney General.
- (9) Adopt regulations as needed for the implementation of this division. A federal representative may decline to participate in actions described in this subdivision if he or she identifies a constitutional or statutory limitation on that participation. The authority granted by this subdivision does not extend to the adoption of regulations to implement the program elements described in subdivisions (a) to (f), inclusive, and subdivision (h) of Section 79441.
- (10) Obtain and hold regulatory permits and prepare environmental documents.
- (11) Pursuant to Section 78684.8, the authority is hereby designated the successor to the Secretary of the Resources Agency for the purpose of carrying

out the balancing and related procedures established pursuant to Section 78684.12.

(This section amended by AB 2683 (Canciamilla), Chapter 955, September 26, 2002)

79421. The authority shall carry out the following duties:

(a) Develop policies and make decisions at program milestones, and provide direction to achieve balanced implementation, integration, and continuous improvement in all program elements.

(b) Track the progress of all program projects and activities and assess overall achievement of the goals and objectives of the California Bay-Delta Program.

(c) Modify, as needed, the California Bay-Delta Program's timelines and activities where the authority deems it necessary to ensure that the program meets its overall goals and objectives. Modification shall be coordinated with implementing agencies and other affected agencies with public input. The authority shall notify the appropriate policy and fiscal committees of the Legislature with regard to any modifications made by the authority.

(d) Communicate with the Congress of the United States and the Legislature on program progress, answer legislative inquiries, review and respond to legislative proposals, and review and submit legislative proposals.

(e) On or before November 15 of each year, review progress in implementing the program.

(f) On or before December 15 of each year, submit a report to the Governor, the Secretary of the Interior, the Legislature, and the Congress of the United States that describes the status of implementation of all program elements for the prior fiscal year.

(g) If, at the conclusion of each annual review submitted pursuant to subdivision (f), or, if a timely annual review has not been issued, the authority or the Governor, or the Secretary of the Interior, if federal authorizing legislation has been enacted, determines, in writing, that either the program schedule or

objective has not been substantially adhered to, the authority, in coordination with the Bay-Delta Public Advisory Committee, the Governor shall, and the Secretary of the Interior may, prepare a revised schedule that will achieve balanced progress in all program elements consistent with the intent of the California Bay-Delta Program and applicable regulatory requirements.

(h) To support annual implementation, the director shall prepare and submit to the Department of Finance an annual state proposed budget, prepared consistent with Section 79423, for each of the program elements and the authority's oversight and coordination duties, in accordance with the annual State Budget process.

(i) Coordinate with federal agencies to develop a proposed federal budget to support the California Bay-Delta Program that the federal agencies can submit to the President of the United States in accordance with the annual federal budget process.

(j) Manage the science program element.

(k) Coordinate, and when appropriate, assist with the integration of, the Bay-Delta Program with other related programs to maximize available resources and reduce conflicts and inconsistencies with other programs.

(l) Provide a forum for the resolution of conflicts or disputes among implementing agencies relating to the program.

(m) Seek out and promote partnerships with local interests and programs that seek to integrate various water management options, and cooperate and undertake joint activities with other persons, including local entities, Indian tribes, water users, and landowners.

These activities shall include, but are not limited to, planning, design, technical assistance, construction projects, and development of an independent science program.

(n) Develop, in cooperation with federal agencies, a regulatory coordination and streamlining process for the issuance of permits and approvals required under state and federal law as necessary, to achieve the program's goals and objectives that reduces or eliminates duplicative process.

- (o) Adopt criteria for review, approval, and modification of annual program plans and projected expenditures pursuant to subdivision (i) of Section 79423. The criteria shall be consistent with existing state and federal agency budget development, review, and approval processes. The authority shall submit a copy of the criteria to the appropriate policy and fiscal committees of the Legislature.
- (p) Meet jointly with the Bay-Delta Public Advisory Committee at least once annually.

79422. By December 15, 2003, develop a pilot program in coordination with the Department of Personnel Administration, the State Personnel Board, the Department of General Services, and the Department of Finance to develop and implement actions that are intended to increase the administrative efficiency of the authority, including, but not limited to, budgeting, contracting, purchasing, and personnel management. The authority shall submit a report summarizing the implementation of this section to the appropriate policy and fiscal committees of the Legislature not later than 120 days after the authority commences the implementation of the pilot program.

79423. (a) The implementing agencies shall annually submit to the director their annual program plan and proposed budget for the following budget year describing how each implementing agency proposes to implement their respective program elements during the following budget year. The director shall then submit a comprehensive budget proposal to the Secretary of the Resources Agency for consideration consistent with the existing budget development process. Individual departmental budget requests are exempt from the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). These programs shall also address environmental justice concerns and assess the impacts of projects and activities on tribal trust resources and tribal governmental concerns.

(b) Each annual program plan and proposed budget shall include programs that are designated as Category A programs in Attachment 3, entitled “Implementation Memorandum of Understanding” of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.

(c) Annually, the authority shall consult with the agencies identified in subdivision (f) of Section 79401 and the Bay-Delta Public Advisory Committee, and shall determine, with the concurrence of the implementing agencies, those changes that shall be made to the list of Category A programs.

(d) Each annual program plan and proposed budget shall include program priorities, work plans, proposed budgets, and significant program products, including, but not limited to, regulations, grant or loan solicitations, schedules for production of environmental documents, and project selection processes.

(e) Annual program plans and proposed budgets also shall include a strategy and proposed budget for addressing program-specific, critical scientific uncertainties, developing and implementing performance measures, evaluating program actions, developing strategies for incorporating tribal and environmental justice interests, and conducting scientific review of program implementation and proposed projects. The implementing agency and the director shall consult with the lead scientist, as appropriate, to determine an appropriate science strategy and proposed budget.

(f) The implementing agencies shall develop comprehensive tribal and environmental justice work plans, including specific goals and objectives and projected expenditures that address all program areas.

(g) The implementing agencies shall coordinate the preparation of annual program plans and proposed budgets with agencies participating in the California Bay-Delta Program, federally recognized Indian tribes, and other appropriate agencies.

(h) The implementing agencies and the director shall seek to integrate the annual plans and proposed budgets for the program elements into a comprehensive and balanced annual implementation plan.

(i) Annually, the authority shall review and approve, and, as appropriate, may recommend that implementing agencies modify, multiyear program plans and long-term expenditure plans on behalf of Category A programs, based on the following criteria:

(1) Consistency with the program.

(2) The balanced achievement of the program's goals and objectives.

(j) If the authority does not approve an implementing agency's multiyear program plan and long-term expenditure plan, the authority shall prepare and submit written findings to the appropriate policy and fiscal committees of the Legislature and the implementing agencies, describing how the multiyear program plan and long-term expenditure plan do not meet the criteria adopted by the authority pursuant to subdivision (o) of Section 79421.

(k) If the authority recommends modification to implementation of the Budget Act for the current fiscal year or the multiyear program plan and long-term expenditure plan, the implementing agency shall resubmit the Budget Act implementation plan, the multi-year plan, or the long-term expenditure plan, as appropriate, to the authority for approval. If an implementing agency makes any of the modifications recommended by the authority, the authority shall submit these modifications to the Legislature.

(l) Nothing in this division limits or interferes with the final decisionmaking authority of the implementing agencies.

(This section amended by AB 2683 (Canciamilla), Chapter 955, September 26, 2002)

Article 3. Limitations on Powers and Duties

79430. The authority shall comply with all applicable state and federal laws, including state water laws.

79431. The authority may not levy taxes, user fees, or assessments without explicit legislative approval.

79432. The authority shall exercise its powers consistent with the California Environmental Quality Act (Division 13 commencing with Section 21000) of the Public Resources Code). Nothing in this division prevents the modification or supplementation of the CALFED Final Programmatic Environmental Impact Statement/Environmental Impact Report, certified by the Secretary of Resources August 28, 2000, or defines the manner in which that document may be used.

79440. For the purposes of this division, “implementing agency” includes those state agencies identified in Section 79441 until the United States, by statute or otherwise, has authorized the identified federal agencies to participate in the governance and implementation of the Bay-Delta Program in the manner set forth in this division. Until that federal authorization has been provided, the state implementing agencies shall consult, cooperate, and coordinate with federal agencies in all matters related to implementation of the program.

79441. (a) The department, the Department of Fish and Game, and the United States Army Corps of Engineers are the implementing agencies for the levee program element.

(b) The state board, the United States Environmental Protection Agency, and the State Department of Health Services are the implementing agencies for the water quality program element.

(c) The Department of Fish and Game, the United States Fish and Wildlife Service, and the United States National Marine Fisheries Service are the implementing agencies for the ecosystem restoration program element. If interests in land, water, or other real property are acquired, those interests shall be acquired from willing sellers by means of entering into voluntary agreements.

(d) The department and the United States Bureau of Reclamation are the implementing agencies for the water supply reliability, storage, and conveyance elements of the program.

(e) The department, the state board, and the United States Bureau of

Reclamation are the implementing agencies for the water use efficiency and water transfer program elements.

(f) The Resources Agency, the state board, the department, the Department of Fish and Game, the United States Natural Resources Conservation Service, the United States Environmental Protection Agency, and the United States Fish and Wildlife Service are the implementing agencies for the watershed program element.

(g) The authority is the implementing agency for the science program element.

(h) The department, the Department of Fish and Game, the United States Bureau of Reclamation, the United States Fish and Wildlife Service, and the United States National Marine Fisheries Service are the implementing agencies for the environmental water account program element.

Article 4. Staff

79450. The Governor, in consultation with the Secretary of the Interior, shall appoint a director who shall serve at the pleasure of the authority.

79451. The director shall administer the affairs of the authority as directed by the authority and shall direct the staff of the authority. The annual salary of the director shall be as provided by Section 11552 of the Government Code.

79452. (a) The authority, with the advice of the director, shall appoint a lead scientist. The lead scientist shall report to the authority. The lead scientist, in cooperation with the implementing agencies, shall be responsible for the development of the science program element.

(b) The lead scientist shall meet the following requirements:

(1) Has undertaken substantial scientific research work in any field related to one or more of the program elements.

(2) Has experience managing environmental issues or advising high-level

managers in methods for promoting science-based decisionmaking in the areas of water management and ecosystem restoration.

(3) Has a record of publication in peer reviewed scientific literature.

(c) For all program elements, the lead scientist shall ensure scientific application of adaptive management, monitoring, and investigations to reduce uncertainties, and full investigation of the effects of each program element on other program elements.

(d) The lead scientist shall ensure that peer review is employed extensively and prudently to ensure the quality of program planning, implementation, and evaluation.

(e) The purpose of the science program element shall be to carry out all of the following functions:

(1) Provide implementing agencies and the authority with authoritative and unbiased reviews of the state of scientific knowledge relevant to management and decisionmaking for the California Bay-Delta Program.

(2) Implement programs and projects to articulate, test, refine, and improve the scientific understanding of all aspects of the bay-delta and its watershed areas.

(3) Provide a comprehensive framework to integrate, monitor, and evaluate the use of adaptive management and the best available scientific understandings and practices for implementing the California Bay-Delta Program.

(4) Independently review the technical and scientific performance of the California Bay-Delta Program, including, but not limited to, all of the following:

(A) Conclusions.

(B) Studies, monitoring, performance measures.

(C) Data analyses.

(D) Scientific practices that form the scientific bases for program decisionmaking.

79453. The director may appoint and hire staff as necessary to administer the affairs of the authority.

(This section amended by AB 2683 (Canciamilla), Chapter 955, September 26, 2002)

79454. The director shall organize authority staff in a manner best suited to administer the affairs of the authority and oversee a complex multiagency program.

79455. Notwithstanding any other provision of law, and only for the purposes of this division, the authority may hire members of federally recognized Indian tribes and nonprofit organizations in accordance with the inter-jurisdictional employee exchange program described in Section 427 of Title 2 of the California Code of Regulations.

(This section amended by AB 2683 (Canciamilla), Chapter 955, September 26, 2002)

79456. Notwithstanding Section 19818.10 of the Government Code, and in cooperation with the State Personnel Board, and the Department of Personnel Administration, the authority shall establish personnel classifications, including a new management level classification, specific to the authority's unique role in oversight and coordination.

Article 5. Advisory Committee

79460. (a) The authority shall provide administrative support for the Bay-Delta Public Advisory Committee.

(b) The authority shall take any administrative actions necessary to maintain the Bay-Delta Public Advisory Committee's status as an advisory committee under the Federal Advisory Committee Act (Public Law 92-463, as amended).

(c) The authority shall provide assistance to the Governor and Secretary of the Interior to ensure that the candidates for appointment to the Bay-Delta Public

Delta Public Advisory Committee are representatives of federally recognized Indian tribes or “stakeholder” groups, reflect a geographic diversity and diversity of interests affected by the health of the bay-delta, and have expertise in the relevant fields as specified in the committee’s federal charter. Appointment shall be made to ensure that the committee as a whole is both balanced and diverse.

(d) The Bay-Delta Public Advisory Committee shall advise and make recommendations to the authority and director on issues related to the California Bay-Delta Program and any of the processes, projects, or programs required by this division.

(e) The members of the Bay-Delta Public Advisory Committee may receive reimbursement for necessary travel expenses incurred by the members in the performance of the members’ duties, consistent with state per diem rates.

Article 6. Independent Science Board

79470. (a) The lead scientist shall nominate, and the authority shall establish, a board of independent scientists, to be known as the Independent Science Board, that shall advise and make recommendations to the authority and the Bay-Delta Public Advisory Committee, as appropriate, on the science relative to implementation of all program elements.

(b) The authority may recognize an existing board of independent scientists as members of the board required by this section.

(c) The authority shall respond in writing to the advice and reviews prepared by the Independent Science Board.

79471. The lead scientist may establish, consistent with subdivision (c) of Section 79403.5 and in cooperation with the implementing agencies, additional independent science panels to assist the implementing agencies and the authority by reviewing and providing advice on scientific issues associated with individual program elements, reviewing multiple program actions within

scientific geographic areas, and defining the state of knowledge relative to specific scientific issues. Members of additional independent science panels may also be members of the Independent Science Board.

CHAPTER 3. SUNSET

79475. This division shall remain in effect only until January 1, 2006, and as of that date is repealed, unless the Secretary of the Resources Agency determines that federal legislation has been enacted authorizing the participation of appropriate federal agencies in the authority. Upon making that determination, the Secretary of the Resources Agency shall notify, in writing, the Secretary of State with regard to that determination.

79476. Notwithstanding any other provision of law, the authority may not undertake any activities pursuant to this division if the authority fails to submit the annual report described in subdivision (f) of Section 79421 on or before March 15 of the year following the year in which the report was required to be submitted.

**CALFED Bay-Delta Program Annual Report
2004**

The CALFED Program Annual Report (2004) is available on the Internet at <http://calwater.ca.gov/AboutCalfed/AnnualReport2004.shtml>. If you wish to receive a published version of the report, please contact the Authority at 650 Capitol Mall, Fifth Floor, Sacramento, CA 95814; Phone (916) 445-5511/FAX (916) 445.7297; or on the Internet at gidding@calwater.ca.gov .

Program Structure

